IN THE HIGH COURT OF PUNJAB & HARYANA AT CHANDIGARH

CR No. 1760 of 2006
Date of decision : 12.9.2006.

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Parties Name

Ajmer

..... Petitioner

vs.

Gram Panchayat, Paonti, Tehsil Barara, District Ambala
and others.

.....Respondents

Coram: Hon'ble Mr. Justice S.N. Aggarwal

Present: Sh. Parminder Singh, Advocate
for the petitioner.

Sh. Pritam Saini, Advocate for
respondents No.1 and 2.

Sh. Jaswinder Sandhu, Advocate for
respondents no. 5, 7, 8, 9 & 10

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S.N. Aggarwal, J.

There is a temple of Gugga Mari in the land measuring 1 Kanal comprised in Khasra No.67, Khewat/Khatauni No.117 min/155min situated in village Paonti, Tehsil Barara, District Ambala. The village Panchayat started raising construction for housing Anganwari in a part of said area on which Ajmer-petitioner and others filed a civil suit for permanent injunction against the village Panchayat among others. An application for interim stay was

also filed under Order 39 Rules 1 and 2 CPC. The said application was opposed by the respondent-Panchayat and others.

The learned trial Court observed that even in the jamabandi for the year 2000-2001, the land is fully described as Gair Mumkin Mandir. If any construction is raised, it will cause nuisance to the worshippers at the time of offering the prayers in the Mandir. The version of the respondents was that a grant has been received for raising construction for housing the Anganwari and a part of the area has been identified as the most suitable area. This version was rejected by the learned trial Court. It was held that prima facie case was made out and the application for interim stay was granted vide order dated 9.9.2004 and the respondents were restrained from making any construction over the area in dispute.

The respondents filed an appeal, which was accepted by the learned Lower Appellate Court by observing that only a small portion of the area is to be occupied for the construction of Anganwari Centre. It was also observed that the suit land is shamlat land and is owned by Panchayat and is being used for a public welfare. Therefore, the appeal was accepted by the learned Lower Appellate Court vide order dated 24.3.2006 and the stay order granted by the learned trial Court was vacated.

Hence, the present revision petition.

The submission of the learned counsel for the petitioner was that only 1 Kanal of land is the land in dispute, in which temple is already existing. It is recorded even in the jamabandi for the year 2000-2001 as Gair Mumkin Mandir. It is further submitted that other

area was available for raising the construction for housing the Anganwari Centre.

On the other hand, the submission of the learned counsel for the respondent-Panchayat was that funds have been received. The SDO, civil has identified this area to be suitable area and numerous residents of the village have supported the idea of raising the construction for housing Anganwari in this area. Hence, dismissal of this petition was prayed.

It was also submitted by the learned counsel for the respondents that the respondents have raised some construction after filling the foundation. However, this is of no consequence.

After considering the rival submissions, I find that the petitioner has a prima facie case. The total area of the land in dispute is 1 Kanal, in which the temple is existing and is duly recorded in the Jamabandi. 1 Kanal is a very small piece of land and if temple of Gugga Mari is existing, the worshippers certainly need a place to sit peacefully and worship in the temple. This is also a public purpose. It is also a common cause and the reduction of this area by taking away 50% of it, will certainly cause serious prejudice to the petitioner and other co-villagers who believe in Mandir worship.

Moreover, the other land is available to the Gram Panchayat for raising the construction for housing the Anganwari. Merely because funds have been made available by the competent body, it does not mean that the temple is to be demolished or the worshippers are to be stopped nor they can be put to inconvenience.

For the reasons discussed above, this petition is accepted.

The order dated 24.3.2006 passed by the Court of Additional District Judge, Ambala is set aside and the order passed by the learned trial Court is restored. The respondents are restrained from raising any construction in the site in dispute during the pendency of the civil suit. However, nothing said in this order shall effect the merits of the case.

Keeping in view the urgency involved, the learned trial Court shall proceed with the disposal of the civil suit expeditiously and it shall be decided preferably within one year.

(S.N.Aggarwal)
Judge

12.9.2006.
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